Report of the Committee on Occupational Health and Safety

October 1984

Report to

The Minister of Labour and Manpower

Of the Committee on Occupational Health and Safety

INTRODUCTION

The Committee was appointed in November 1983 by the then Minister of Labour and Manpower, The Hon. Jack A. MacIsaac. The terms of reference were broad in scope and the Committee directed its attention to all aspects of occupational health and safety.

The Committee members were:

Dr. Thomas J. McKeough, Chairman

Barry Wark, Canadian Manufacturers' Association

Leslie White, Construction Association of Nova Scotia

Dannie MacDonald, Building Trades Union

Rick Clark, Nova Scotia Federation of Labour

As a first step, notice was given to the public inviting both written and oral representations. The Committee made itself available in Halifax, Sydney, Amherst, New Glasgow and Yarmouth and as a result received approximately 50 briefs. The Committee is indebted to all those individuals and organizations for their valuable assistance and has incorporated many of their recommendations and concerns in this report.

The Committee, cognizant of the fact that many other provinces have recently amended their legislation in the area of occupational health and safety, felt it important to draw on their expertise and experience. Invaluable information was obtained by meetings with a cross section of key representatives from the departments or agencies administering occupational health and safety legislation in Newfoundland, New Brunswick, Ontario, Saskatchewan, Alberta and British Columbia.

A series of meetings was also convened to allow representations to the Committee from agencies within the Nova Scotia Government now having responsibilities for occupational health and safety. The Committee met with officials from the Department of Mines and Energy, Department of Health, Workers' Compensation Board, and the Department of Labour and Manpower.

RECOMMENDATIONS

It is with this background and given the respective expertise of the members of the Committee that the following recommendations are respectfully submitted.

Administrative Consolidation. It is recommended that the Department of Labour and Manpower be the lead agency in the administration and enforcement of occupational health and safety. This will require the absorption by the Department of Labour and Manpower of mine inspectors from the Department of Mines and Energy, Occupational Health staff of the Department of Health, and the Accident Prevention Section of the Workers' Compensation Board. This recommendation is consistent with a recommendation of the Select Committee on Workers' Compensation and with the situation that exists in the vast majority of other provincial jurisdictons. This concept would enable greater cooperation and coordination of occupational health and safety services and provide one-window shopping for users of the service rather than the fragmented situation which presently exists. The Committee would urge that steps be taken to accomodate the consolidation at the earliest possible time. Administrative changes would also be required and accordingly it is recommended that a senior position be created to oversee this expanded jurisdiction.

Omnibus Legislation. All health and safety legislation to be consolidated into one Act. What is envisaged is an omnibus 'Occupational Health and Safety Act' which would have general application, be concise, leaving details to regulations, codes of practice, etc. Brevity and clarity of language should be the key ingredients.

Scope of Act. The Act should have universal application and as such afford all employees and employers the same rights and duties. Upon recommendation of the Advisory Council to the Minister of Labour and Manpower, consideration may wish to be given to the exclusion of certain groups by Order in Council. The Industrial Safety Act now basically applies to manufacturing operations and excludes such groups as office workers, retail industry, service occupations, government employees, etc.

Right to Know - Right to Participate - Right to Refuse. These are the three basic 'R's which have been incorporated in the federal jurisdiction and with the exception of P.E.I. and N.S. in all provincial jurisdictions. All three are interrelated and in the Committee's opinion, are essential ingredients to an enlightened approach to occupational health and safety legislation.

In order for an employee to make a rational judgment that a particular task or activity will place his* health or safety in jeopardy, he must have certain basic information at his disposal. Information on toxic substances in the workplace should be communicated to employees; hazardous products should be labelled; employees should have access to their own medical reports; and government inspection reports, orders and directives should be posted. To provide greater access to information on toxic substances, the Department should be given legislative authority to obtain information from suppliers on behalf of employers. These are some of the ways that employees can become better informed about hazards that might effect their health or safety.

An employee should not only have the right to know about his working environment, he should have the right to participate in decisions which impact on his health and safety. The use of safety and health committees has been the generally accepted way of involving employees in this process and is endorsed by the Committee. Committees should consist of equal numbers of

*The masculine pronoun has been used throughout this report for ease of reading and implies both men and women.

employee and employer representatives. This should be mandatory for all employers with 20 or more employees and for employers with less than 20 employees, the head of the Occupational Health and Safety Division would have the discretion to order the formation of a Committee. For employers having less than 20 employees and a good accident record, there would not be an automatic requirement to set up a safety committee. Provisions should also be made for self-starting committees upon notice being served on the Director and the employer that either the union or the necessary percentage of employees desires the formation of a committee. The employer could utilize a similar route if he wished to form a committee.

Legislation should specifically identify the functions and authority of committees with a requirement that the employer be responsible for paying committee members for time spent in fulfilling their duties.

The legislation should also provide for the continued existence of committees that are already in place so long as they provide at least the same benefits as legislated committees. Committees should be required to meet on a regular basis and to keep written minutes, which would be available on request to an inspector.

Special provision should be made by way of regulations for the operation of committees in the construction industry. In this regard we recommend that where 20 or more workers are employed on a construction site a committee would be required with equal labour and management representation. Where possible the various trades and sub-contractors would be represented.

With these mechanisms in place, the worker should be better prepared to make a rational decision as to whether a particular activity is dangerous to his health or safety and exercise his right to refuse work which places his safety or health in jeopardy. Needless to say, this recommendation is probably the most controversial one that the Committee will be making and is essential to the legislative scheme proposed herein.

Employers were genuinely concerned that employees would abuse the right and disrupt the operations of a company without justification. The Committee accepts this position as a legitimate concern but is comforted by the experience of other provinces which have witnessed very limited use of employee work refusals; in the case of Saskatchewan, the experience spans 12 years. Mindful, however of the potential for abuse, the Committee is of the opinion that careful consideration must be given to the actual choice of words conferring this right and the procedures to be followed in its exercise.

The Committee was fortunate in having the benefit of the experience of other jurisdictions in deciding on the specific language it would recommend. It has chosen the following language.

> "Any employee may refuse to do any act at his place of employment where he has reasonable grounds for believing that the Act is likely to endanger his health or safety or the health or safety of any other employee."

Of initial concern to the Committee in recommending this language was whether it took into consideration that some jobs are inherently more dangerous than others. However, judicial interpretation in provinces using similar language indicates that, providing an employee is properly trained and equipped, he would not have a legitimate right to refuse work which by its very nature has built-in risks, for example the work of police or firemen. A number of provinces have removed the word 'imminent' from their legislation since the use of that word suggests that if a person's health or safety is not likely to be endangered in the near future, then it is not of an immediate nature and the right to refuse would not exist. This is especially relevant because of the awareness of industrial diseases that have a long latency period.

The procedure set down for exercising this right is as important as the choice of words. The employee should be required to follow legislated steps in a work refusal situation. He should first report the problem to his supervisor and, failing corrective action at this point, then report the problem to the Safety Committee and finally to an inspector. A final determination as to whether the refusal is justified and, if so, what corrective action needs to be taken by the employer would lie with the inspector. An employer faced with a worker refusal should have the right to reassign the work to another worker providing this other worker has been informed of the refusal, the reason for the refusal and his rights under the Act. The employer should also have the right to reassign the refusing worker while maintaining his pay and benefits until corrective action has been taken or an officer has determined that no danger exists.

A third and equally important element concerns prohibiting employer reprisal against an employee who has execised his right to refuse. Recourse to an impartial adjudicator either via arbitration, Labour Relations Board, etc., should be made easily accessible to an individual who feels he has been unfairly dealt with because he has exercised his right to refuse. The adjudicating body should be empowered to reinstate and/or reimbuse the employee where the employer has been found to have taken discriminatory action.

Education and Training. Many of the presentations to the Committee stressed the need for a greater emphasis on training and education in the field of occupational health and safety. As a starting point, it was felt that a basic awareness of the need for health and safety in the workplace should be provided in the school system at both the secondary and post secondary levels. Government sponsored training programs providing for the input of both employers and employees should be encouraged and promoted.

The effective operation of health and safety committees in the view of the Committee requires a commitment by government of resources made available for training. The proper functioning of health and safety committees is a key and essential ingredient in an effective occupational health and safety program. It was with this in mind that the Committee earlier recommended a transfer of the Accident Prevention staff of the Workers' Compensation Board to the Department of Labour and Manpower. A successful committee structure also provides for a greater degree of self-regulation and thereby, hopefully eases the workload of government inspectors.

Advisory Council. An Occupational Health and Safety Advisory Council should be established consisting of equal representation from management and labour appointed by the Minister of Labour and Manpower. The Council would be responsible for advising the Minister on matters relating to the protection and promotion of occupational health and safety generally. Membership on the Council should also include the head of the Occupational Health and Safety Division and the Chairman of the Workers' Compensation Board, or their designates.

General Provisions. The rights and obligations of employers and employees should be stated, including an employee's duty to refuse work where there exists an imminment danger to his or another person's health or safety. A complete revision of fines and penalties for violations of the Act by either employer or employees is necessary and the policy of the Department in initiating prosecution should apply equally to both parties. Such a policy would recognize that although the employer has the responsibility to provide a safe and healthy work environment, the worker also has an obligation to perform his tasks with due consideration to both his health and safety and that of his fellow workers.

A key factor in the successful operation of a health and safety program by the administering agency is the ability to access a sound data base. The principal source of this data is the Workers' Compensation Board and consequently there must be a close working relationship and direct access by the Division to the Board. Ways and means of improving this statistical base should also be explored.

Although this report is not meant to be an exhaustive review of all of the provisions that should be included in a new legislative package, the Committee believes that it has set out the key principles that should form the basis for a new direction in the area of occupational health and safety in Nova Scotia. The Committee is extremely interested in being involved in the process whereby these principles are translated into legislation and would respectfully request that the Committee be retained on a consultative basis. We would be very much interested in discussing our report with you or assisting in any way possible in bringing these recommendations to fruition.

Respectfully submitted,

Committee on Occupational Health and Safety

Chairman

Thomas J. McKeough, M.D.

Members

Dannie MacDonald

Barry Wark

Leslie White

Rick Clarke

Secretary

Paul Langlois